

Chapter 1

Background to the inquiry

Terms of reference

1.1 On 2 October 2014, the Senate referred the matter of corporate tax avoidance and aggressive minimisation to the Economics References Committee (the committee) for inquiry and report by the first sitting day of June 2015.¹ The Senate extended the reporting date for the inquiry on a number of occasions and, as a result, the reporting date was ultimately extended to 22 April 2016.²

1.2 The terms of reference for the inquiry are:

Tax avoidance and aggressive minimisation by corporations registered in Australia and multinational corporations operating in Australia, with specific reference to:

- (a) the adequacy of Australia's current laws;
- (b) any need for greater transparency to deter tax avoidance and provide assurance that all companies are complying fully with Australia's tax laws;
- (c) the broader economic impacts of this behaviour, beyond the direct effect on government revenue;
- (d) the opportunities to collaborate internationally and/or act unilaterally to address the problem;
- (e) the performance and capability of the Australian Taxation Office (ATO) to investigate and launch litigation, in the wake of drastic budget cuts to staffing numbers;
- (f) the role and performance of the Australian Securities and Investments Commission in working with corporations and supporting the ATO to protect public revenue;
- (g) any relevant recommendations or issues arising from the Government's White Paper process on the 'Reform of Australia's Tax System'; and
- (h) any other related matters.³

Conduct of inquiry

1.3 The committee advertised the inquiry on its website and in *The Australian*. The committee also wrote directly to government agencies, large corporations based in Australia and multinationals operating in Australia, industry groups and

1 *Journals of the Senate*, No. 59, 2 October 2014, p. 1588.

2 *Journals of the Senate*, No. 95, 15 June 2015, p. 2644; *Journals of the Senate*, No. 105, 12 August 2015, p. 2921; *Journals of the Senate*, No. 126, 23 November 2015, p. 3419; and, *Journals of the Senate*, No. 138, 22 February 2016, p. 3749.

3 *Journals of the Senate*, No. 59, 2 October 2014, p. 1588.

associations, academics and other interested parties drawing attention to the inquiry and inviting them to make submissions.

Submissions and public hearings

1.4 The committee received 127 submissions, including 3 confidential submissions. The list of submissions and an index to answers to questions on notice are listed at Appendix 1.

1.5 The committee held seven public hearings:

- 8 April 2015 in Sydney;
- 9 April 2015 in Canberra;
- 10 April 2015 in Melbourne;
- 22 April 2015 in Sydney;
- 1 July 2015 in Sydney;
- 18 November 2015 in Sydney; and
- 21 April 2016 in Canberra.

1.6 A list of witnesses is provided at Appendix 2.

First report on corporate tax avoidance

1.7 Given the broad scope of the terms of reference and the timing of the multilateral OECD/G20 initiative on base erosion and profit shifting, the committee resolved to report on the initial work of the inquiry and the four public hearings that were held in April 2015. The interim report examined the evidence presented to the committee by some of the largest multinational corporations operating in Australia. It concluded that, despite the recent efforts of successive governments to address corporate tax avoidance, significant concerns persist about multinational corporations not paying an appropriate amount of tax in Australia relative to their activities here.

1.8 The interim report supported the ambitious OECD/G20 initiative to develop a coordinated response to base erosion and profit shifting but also noted that this initiative should not prevent the Australian Government from taking unilateral action.

1.9 The interim report made 17 recommendations over four areas:

- evidence of tax avoidance and aggressive minimisation;
- multilateral efforts to combat tax avoidance and aggressive minimisation;
- potential areas of unilateral action to protect Australia's revenue base; and
- the capacity of Australian government agencies to collect corporate taxes.

1.10 The recommendations of the interim report focused primarily on increasing the transparency of corporate tax affairs and ensuring that tax administrators could access the information required to identify and act on aggressive tax minimisation and avoidance. The committee continues to strongly support all of the 17 recommendations made in the interim report.

1.11 The committee tabled the interim report, *Part I—You cannot tax what you cannot see*, on 18 August 2015. The report is available on the committee's website.

Second report on corporate tax avoidance

1.12 In this second report on corporate tax avoidance, the committee continues its consideration of the importance of transparency with particular emphasis on transfer pricing and the secrecy surrounding this activity. The committee briefly touches on exemptions from general purpose accounting. It also looks at tax minimisation strategies including excessive debt loading and avoiding permanent establishment in Australia.

1.13 Although the committee has delved into the use of tax havens as a means of avoiding tax, recent revelations emanating from a law firm operating out of Panama have enlivened commentary about this practice.

Use of overseas tax havens by Australians

1.14 At the beginning of April 2016, an international coalition of media outlets published their findings based on extensive investigation into the offshore financial dealings of many individuals and companies throughout the world. This investigation was based on the disclosure of a vast volume of documents, known as the Panama Papers, which came from an anonymous source.

1.15 The Australian Taxation Office (ATO) has indicated that it has received data in relation to the Panamanian law firm at the centre of these revelations, which contain the names of 'a significant number of Australian residents'. At this time, 4 April 2016, the ATO had identified over 800 individual taxpayers and linked over 120 of them to an associate offshore service provider located in Hong Kong. The ATO explained:

We have been analysing the latest data against information these taxpayers had reported to the ATO and against the information we already have. We are also working closely with the AFP, Australian Crime Commission and AUSTRAC [Australian Transaction Reports and Analysis Centre] to further cross-check the data and strengthen our intelligence. Some cases may be referred to the Serious Financial Crime Taskforce. This Taskforce builds on the success of Project Wickenby where we raised \$2.29 billion in tax liabilities and there were 46 criminal convictions.⁴

1.16 In light of information coming out of the Panama Papers and the ATO's investigations, the committee will defer further consideration on the use of tax havens as a means of avoiding and, in some cases, evading tax in Australia, until there has been sufficient time to evaluate the data.

1.17 At first glance, however, the papers seem predominantly to involve individuals not multinationals. That said, these revelations provide additional evidence that tax avoidance and aggressive minimisation extends beyond the realm of large

4 ATO media centre, 'ATO statement regarding release of taxpayer data', 4 April 2016, <https://www.ato.gov.au/Media-centre/Media-releases/ATO-statement-regarding-release-of-taxpayer-data/> (accessed 12 April 2016).

multinationals. The ATO is well aware of the potential for wealthy individuals to structure their activities to minimise their tax obligations and noted that:

Wealthy individuals and their private groups often have complex arrangements and utilise flow-through entities such as trusts and partnerships in addition to companies.⁵

Project DO IT

1.18 It should be noted that the ATO embarked on a concerted effort to stamp out tax evasion using offshore accounts. In October 2014, the ATO launched *Project DO IT: disclose offshore income*. This project, which ended on 19 December 2014, offered reduced taxes and penalties for people who voluntarily disclosed offshore income and assets. It provided an opportunity for any Australian who had engaged in unreported offshore financial activities to disclose their activity. According to the ATO, under this project more than 5800 Australians brought \$600 million in offshore income and \$5.4 billion in assets back into the Australian economy with the ATO raising more than \$245 million in additional tax revenue liabilities for the community.

1.19 The ATO has continued its commitment to stop offshore tax evasion. At the end of 2015, it announced that it was ramping up its focus on this type of activity. It noted that:

As part of a new wave of action to combat offshore evasion which has seen the ATO obtain more than 5000 client names from wealth management firms and compile a list of 100 advisers and promoters operating globally that have a direct link with people who may have evaded taxes.

...

The intelligence picture we now have has been built from information taxpayers disclosed under Project DO IT about the adviser who put them into the offshore arrangements, data mining and client records seized from advisers in transit...⁶

1.20 According to the ATO, it has:

...more information than ever before about Australians with offshore income and assets. Australia has an existing network of international treaties and information exchange agreements with over 100 jurisdictions. During 2014–15 the ATO engaged in 519 exchanges of information resulting in total tax liabilities of \$255 million.⁷

5 *Submission 48*, p. 12.

6 ATO Media Centre, 'Tax Office chasing up advisers who facilitate offshore tax evasion', <https://www.ato.gov.au/media-centre/media-releases/tax-office-chasing-up-advisers-who-facilitate-offshore-tax-evasion/> (accessed 15 April 2016).

7 ATO Media Centre, 'Tax Office chasing up advisers who facilitate offshore tax evasion', <https://www.ato.gov.au/media-centre/media-releases/tax-office-chasing-up-advisers-who-facilitate-offshore-tax-evasion/> (accessed 15 April 2016).

1.21 In response to the disclosure of the Panama Papers, the ATO has initiated discussion with 28 countries to improve international cooperation in uncovering tax avoidance activities.

1.22 While many of the structures and activities used by wealthy Australians may be within the letter of the law, it nevertheless raises the question as to why it is acceptable for wealthy individuals and private companies and trusts to derive benefit from residing in Australia without making an appropriate contribution to tax revenue. In the committee's view, and in light of the leak of the Panama Papers, it would be appropriate for the committee to look into the extent to which individuals in Australia use overseas havens to hide assets and evade tax and to assess the ATO's initiatives to combat this type of activity.

1.23 Consequently, the committee intends to consider Australians' use of offshore facilities to avoid paying their due taxes and will seek an extension to the final reporting date in order to examine and report on this matter.

Acknowledgements

1.24 The committee thanks all the individuals and organisations who assisted with the inquiry through written submissions and appearing at hearings. In particular, the committee would like to acknowledge the efforts that many companies and government departments made to make available senior executives, often at short notice.

